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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

)
Eligibility for the Specialized)
Mobile Radio Services)
and Radio Services in the)
220-222 MHz Land Mobile Band)
and Use of Radio Dispatch)
Communications)

GN Docket No. 94-90

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

COMMENTS OF AIRTOUCH COMMUNICATIONS

AirTouch Communications ("AirTouch") submits these comments on the Notice of Proposed Rulemaking ("NPRM") in GN Docket No. 94-90, released August 11, 1994. In this NPRM, the Commission proposes to amend the rules governing licensee eligibility in the Specialized Mobile Radio (SMR) service and in the commercial 220-222 megahertz (MHz) land mobile services. AirTouch supports the Commission's proposal to eliminate the current prohibition on the provision of dispatch service by cellular licensees and other mobile service common carriers.

AirTouch is one of the world's leading wireless telecommunications companies, with significant cellular and paging interests in the United States, Europe and Asia.¹ In the United States, AirTouch Cellular operates cellular systems in 10 of the 30 largest markets. AirTouch seeks the freedom to provide dispatch services over cellular frequencies to meet the demand of its customers for custom-tailored applications of wireless technologies on an integrated basis.

¹ Formerly a subsidiary of Pacific Telesis Group, AirTouch Communications was spun off as an independent company on April 1, 1994.

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As required by the regulatory parity principles of the 1993 Omnibus Budget Reconciliation Act, the Commission reclassified private dispatch service providers as common carriers if they provide "interconnected services" in direct competition with other CMRS providers.² Because these Enhanced SMR licensees remain free to provide both dispatch and interconnected voice services, cellular common carriers in direct competition with ESMRs require comparable flexibility and freedom to attract and retain customers in the mobile services marketplace. Retention of the ban violates the statutory objectives of a consistent regulatory framework which provides similar services with symmetrical requirements.³

Technological changes, strategic alliances and new regulatory treatment have dramatically altered the nature and degree of competition in the dispatch market. Spurred by the Commission's ruling in the Fleet Call proceeding,⁴ the traditional dispatch industry has undergone a radical change over the past three years. Spectrum is being consolidated into the hands of the single mega-system of Nextel, through the aggregation of large channel blocks in markets across the United States.⁵ This has resulted in fewer independent service providers per market as Nextel acquires more spectrum to fulfill its vision of creating a high quality, interconnected nationwide mobile communications network.

As early as 1992, Nextel claimed that "no other SMR operator has adequate spectrum to replicate a cost-effective Digital Mobile System within the Company's six

² Second Report and Order, GN Docket No 93-252, 9 FCC Rcd 1411 (1994).

³ *Id.* at Para. 14.

⁴ Fleet Call, Inc., 6 FCC Rcd 1533, 6 FCC Rcd 6989 (1991).

⁵ Wall Street Journal, August 31, 1994, "Old Dispatch Systems are Tickets to Riches for Former FCC Man."

markets."⁶ In addition to acquiring spectrum in each market, Nextel has gone on to fulfill its nationwide objectives through its merger with DisCom, DialPage, and Motorola SMR properties, and acquisition of OneComm.⁷ By permitting cellular licensees to compete directly with this nationwide system in the provision of non-switched two-way voice traffic, the Commission will be facilitating more competition and choices for consumers.

Consumer demand for an integrated set of wireless services is growing. In extensive market research conducted by AirTouch, the public consistently indicated that the most attractive packages proposed included a combination of text messaging, vehicle location, alpha-numeric paging, fax, dispatch and mobile voice. Cellular networks are fully capable of creating such a platform as they transition to digital technology that expands capacity and enhances transmission quality as carriers develop sophisticated service packages. Therefore, retention of the dispatch ban on cellular carriers would harm consumers by affording them fewer choices in a less responsive industry.

Repeal of the dispatch provision will also increase competition in rural areas. The initial build-out of ESMR networks has been in major metropolitan areas where the demand is the greatest.⁸ Cellular systems already operational in rural areas could bring the benefits of additional competition in dispatch today, more rapidly and economically than would occur with retention of the ban. This is particularly true because of the available capacity which exists today on most RSA systems.

⁶ Nextel 1992 Prospectus at 4.

⁷ See Nextel Corporate Releases 7/23/93; 8/5/94. "Nextel has acquired (through about 125 separate transactions) the bulk of SMR spectrum." Salomon Brothers, U.S. Equity Research, April 1994.

⁸ Nextel announced full commercialization of its network in Los Angeles in May, 1994, followed by San Francisco in July. Service activation in Chicago and New York is expected in third quarter 1994. See Prudential Securities Industry Comments May 18, 1994.

For these reasons, AirTouch opposes a future sunset of the rule as suggested in Para. 32 of the NPRM. While the dispatch industry is a highly competitive one, particularly with the additional licenses awarded in the 220 MHz spectrum, the ability to offer dispatch on an integrated basis with other two-way voice and data services is limited. Delaying cellular entry will merely protect a single ESMR company at the expense of promoting competition itself.

The Commission requests comments on whether common carriers operating in the dispatch market could engage in discriminatory pricing or cross-subsidization activities that would place dispatch competitors at a disadvantage.⁹ Anti-competitive cross-subsidization occurs in markets where a provider with market power in one service or product can leverage that power to impact prices and reduce competition in other product or service markets. Since cellular providers do not have market power in CMRS, such concerns are misplaced. As prices are set by competitive market forces, there is no incentive or ability to subsidize dispatch service prices with "monopoly profits" from common carrier services because there are no monopoly profits. Instead, provision of dispatch services over cellular networks would create pro-competitive economies of scope. Just as Nextel and other ESMR competitors can create efficiencies through the provision of a range of wireless services over their digital infrastructure, cellular carriers likewise can utilize their existing infrastructure, sales, customer service, and billing operations to offer dispatch on an economic basis.

AirTouch also opposes the adoption of any predetermined limit on the amount of spectrum or capacity for dispatch use on cellular systems.¹⁰ Any such limitation would be arbitrary and unnecessary. With the transition to digital technologies, and the

⁹ NPRM at Para. 31.

¹⁰ NPRM at Para. 33.


assignment of 120 MHz of additional CMRS spectrum which will soon be licensed for broadband mobile radio services, spectrum capacity will not be a problem. As the Commission recognizes, cellular providers would be unlikely to divert system capacity at the expense of their interconnected voice services because such services comprise the core of their market.

Finally, AirTouch concurs with the Commission that Congress did not intend to extend the dispatch ban to other than land mobile licensees (such as mobile satellite services) when it amended Section 332.¹¹ Moreover, the public interest favors the provision of dispatch through mobile satellite services. Even though there are cost, capacity, and transmission constraints in the provision of traditional dispatch services over satellite systems, mobile satellite services could augment traditional dispatch by extending the range of dispatch messaging to remote areas, both for business and public safety purposes. It can thus enhance the value of dispatch especially in emergency situations where terrestrial dispatch may be vulnerable such as during earthquakes or floods. From a public service perspective, mobile satellite should not be prohibited from providing dispatch services.

¹¹ NPRM at Para 34.

In conclusion, AirTouch supports the Commission's proposal to lift the cellular dispatch ban. Cellular participation in dispatch is consistent with statutory principles of regulatory parity. The ban disserves consumers by limiting the number of providers capable of offering integrated dispatch and interconnected voice services. Lifting of the ban will encourage the efficient use of wireless networks, innovation in the development of new service offerings, and lower rates.

Respectfully submitted


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